

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1157 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

HARESH H MAJMUDAR

Appearance:

Mr. S.S.Patel, ASSTT. GOVERNMENT PLEADER for Petitioners
MS SEJAL K MANDAVIA for the Respondent.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 06/04/2000

ORAL JUDGEMENT

This Revision Application has been filed
by the State of Gujarat, Principal Conservator of Forests
and Conservator of Forest, Junagadh circle, Junagadh
against the judgment and order dated 13.7.99 in Civil
Misc. Appeal No. 78 of 1999 passed by the learned

Assistant Judge dismissing the appeal and thereby confirming the order dated 11th June, 1999 below exh. 5 in Regular Civil Suit No. 235 of 1999 passed by the learned 4th Joint Civil Judge (S.D.), Junagadh.

2. The respondent plaintiff joined as clerk in the Forest Department on 14.12.1972. He was promoted to the post of Accountant on 30th September, 1982. He was given ad hoc post of Legal Superintendent on 11 month basis. The order dated 23rd January, 1992 was passed directing the plaintiff to join the original post of Accountant after relieving him from the post of Legal Superintendent. The respondent-plaintiff therefore, filed Special Civil Application no. 494 of 1992 in this Court and obtained ex-parte interim order on 24th January, 1992 in his favour. Special Civil Application No. 494 of 1992 was dismissed on 17.11.97 and the interim order was vacated. The plaintiff therefore, filed L.P.A. No. 52 of 1997 against the aforesaid order dated 17.11.1997 and the LPA is still pending. It is also stated that the plaintiff filed Regular Civil Suit no. 68 of 1996 in the Court of the Civil Judge (S.D.), Junagadh wherein the trial court passed an order directing the parties to maintain status quo vide order dated 19th January, 1996. After hearing, the application exh.5 was dismissed on 2nd February 1996 and interim injunction granted on 19.1.96 was vacated. An appeal was filed before the District Court on 2.2.96 and ex parte status quo order was passed in favour of the plaintiff and that continued till 31st May, 1999. The authorities passed an order dated 29th April, 1999 terminating the services of the respondent-plaintiff from the post of Legal Superintendent, but there was no order directing the plaintiff to join his original post of Accountant. For that purpose, the plaintiff was constrained to file Regular Civil Suit No. 235 of 1999 for an injunction directing the department to give him the post of Accountant and for a permanent injunction restraining the department from discharging his duties as an Accountant. The learned trial Judge by an order dated 11.6.99 below exh. 5 directed the petitioners-defendants "Till the disposal of this suit, as the respondent no.2 vide its order dated 29.4.99 has relieved the plaintiff from the post of Legal Superintendent, the plaintiff is required to be resumed on the original post of Accountant for performing duties by the respondent, and the respondent no. 2 has to make formal order, if order is required. The respondent shall have to implement this order within 15 days. Being aggrieved by the said order, the petitioners filed Civil Misc. Appeal no.78 of 1999 before the District Court, Junagadh. The learned

Assistant Judge, Junagadh by his order dated 13th July, 1999 dismissed the appeal and has confirmed the order of the learned trial Judge. Therefore, being aggrieved by the said order, the petitioners -original defendants have have filed this Civil Revision Application before this Court.

3. The learned AGP Mr. Patel on behalf of the applicants contended that the trial court has no jurisdiction to entertain the suit till the remedy by way of an appeal in the department is exhausted by the respondent. He further contended that the notice required under section 80 of the Civil Procedure Code has not been given to the department before filing the suit, as a result, the suit is not maintainable. Further granting of interim relief would amount to allowing the suit at the initial stage. As such, the Civil Court has committed an error of law in entertaining the suit and granting ad-interim order which has been erroneously confirmed by the lower appellate court. As such, according to him, the orders passed by the courts below are illegal and not sustainable in the eye of law.

4. Heard the learned counsel for the parties and perused the relevant record. This Revision Application has been filed against concurrent findings of the courts below only on the question of interim relief. Both the courts below have taken into account the fact that the respondent-plaintiff was appointed on the post of Legal Superintendent on ad hoc basis as the said post was to be filled up by a direct recruit. The respondent-plaintiff was working in the department and he cannot hold that office and only for a stop-gap arrangement on temporary basis and he was directed to resume that office. There was an understanding between the department as well as the plaintiff that as soon as a direct recruit will be available for the post of Legal Superintendent, the plaintiff will be reverted to his original post of Accountant. In this connection, there are two letters at marks 4/2 dated 15.2.91 and 4/4 dated 23rd January, 1992. According to the letter mark 4/2 dated 15.2.91, it is stated that the Principal Chief Conservator of Forest, State of Gujarat informed the Conservator of Forest, Junagadh circle, Junagadh that the question of taking resignation from the plaintiff does not arise as the appointment to the Accountant Shri Majmudar is to be given in the department itself. When the appointment of a candidate on the post of Legal Superintendent is made by Public Service Commission, the respondent-plaintiff is required to be posted back to his original post. While the letter dated 23.1.1992 mark 4/4

says that the appointment was given to Shri Majmudar to the cadre of Legal Superintendent purely on ad hoc basis for a period of 11 months by a letter dated 27/28.2.1991. After expiry of this period, he was ordered to be relieved from the post of Legal Superintendent vide letter of even number dated 27.1.82 of the office of Conservator of Forest. Hence, the appointment is required to be given to him to the original cadre of accountant. Under those circumstances, he was required to be appointed as an Accountant to his parent department in Junagadh circle, hence, he was requested to resume on 28th January, 1992 as Accountant. On the basis of these two documents and other facts and circumstances, the trial court as well as lower appellate court came to the conclusion that there was an understanding between the parties that the plaintiff will hold the post of Legal Superintendent till that post is filled up by a direct recruit selected by Gujarat Public Service Commission. The initial appointment of the plaintiff made for a period of 11 months. The plaintiff thought tht he might be promoted to that post, hence he filed the Special Civil Application in this Court and ex parte interim order was passed in his favour and that continued till 17.11.97. Thereafter, the plaintiff continued to hold that post of Legal Superintendent till 31st May, 1999. By an order dated 11.6.99, the department was directed to pass a formal order, if necessary, permitting the plaintiff to resume the duty as an accountant. By an order dated 17.3.99, the Conservator of Forest-respondent no. 3 passed the order directing the plaintiff to resume duty on his original post of accountant. But lateron, it appears on oral instructions of higher officer that order was cancelled by the same officer on 28th July, 1999 and now the plaintiff is not being permitted to resume his duties on his original post of accountant.

5. The learned AGP for the petitioners submitted that after three years, the respondent-plaintiff has lost his lien and in support of his this argument, he placed reliance on the decision of the Supreme Court in the case of Dr. S.K.Kacker vs. All India Institute of Medical Sciences and others reported in (1996) 10 SCC,734 wherein it has been held that on appointment to, and acquring a lien in, a permanent post, be it under the Central Government or the State Government, outside the cadre on which the government servant is borne, his lien on the previous permanent post stands terminated. He also relied on rule 19(b) of Bombay Civil Service Rules, 1959 in this regard.

6. I have carefully considered the

contentions of the learned advocate for the petitioner. But the facts of the decision of the Supreme Court cited by the learned AGP are totally different and not applicable to the facts of the present case. Moreover, Rule 20-A of the Bombay Civil Service Rules requires that a Government servant's lien on a post may in no circumstances be terminated even with his consent, if the result will be to leave him without a lien or a suspended lien upon a permanent post. As such, the contention raised by the learned AGP has no force. On the other hand, the respondent-plaintiff had a lien on the original post on the basis of the undertaking by the department and under the Rules, when the plaintiff's lien will continue and after relieving from post of Legal Superintendent, the plaintiff's lien will revive and he is required to be permitted to perform his duties on his original post of accountant.

7. After careful examination and consideration of the contentions and facts and circumstances, I hold that the orders passed by the courts below do not suffer from any substantial illegality, infirmity or jurisdictional error. Hence, the courts below are fully justified in passing the order. Thus, I do not see any reason to interfere with the concurrent findings of the courts below in exercise of revisional jurisdiction under section 115 of the Civil Procedure Code. As a result, this Revision Application deserves to be dismissed and is accordingly hereby dismissed. Rule is discharged with no order as to costs. Interim relief, if any, stands vacated.

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